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March 5, 1993

Richard C. Hartgrove  
General Attorney

Mr. William A. Blase  
Director-Federal Regulatory  
Southwestern Bell Corporation  
1667 K Street, N.W., Suite 1000  
Washington, D.C. 20006

Dear Bill:

Re: Comments of Southwestern Bell Telephone  
Company, RM-8181

Enclosed please find an original and five (5) copies of the above-referenced pleading to be filed with the Secretary of the Commission on Monday, March 8, 1993. Also enclosed is a copy of the pleading to be filed-stamped and returned to me.

Additional copies of the pleading are attached to be used as the courtesy copies and one is included for your files.

Please call to confirm that the pleading has been filed. Thank you for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Richard C. Hartgrove".

One Bell Center  
Room 3520  
St. Louis, Missouri 63101

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MAR - 8 1993

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )  
 )  
the Petition ) RM-8181  
of the Inmate Calling )  
Services Providers Task Force )  
for Declaratory Ruling )

SOUTHWESTERN BELL TELEPHONE COMPANY

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March 8, 1993

COMMENTS OF  
SOUTHWESTERN BELL TELEPHONE COMPANY

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### SUMMARY\*

ICSPTF's Petition reflects a fundamental misunderstanding of the purpose of the Commission's pay telephone exclusion from the definition of CPE -- to provide members of "the general public or some segment thereof" access to telephone service. Unlike the multiplexer exclusion on which ICSPTF so heavily relies, the pay telephone exclusion is broadly construed to effectuate this public purpose.

Inmate-only pay telephones meet the Commission's pay telephone exclusion test -- whether the primary user is "the general public or some segment thereof." Inmates remain members of the general public despite their confinement, or are a segment thereof because of it. In either event, like other members of the public, an inmate does not own the telephone, cannot dictate who may use it, and does not separately select or pay for its use. Like other members of the public, inmates regard the pay telephone instrument and transmission line as an end-to-end, integrated service. Thus, the Commission's regulated treatment of pay telephones fully applies to inmate-only pay telephones used by inmates confined in federal, state, municipal, and other correctional facilities.

The regulated status of such pay telephones is not lost because SWBT also provides them, where requested by correctional officials, with certain advanced functionalities necessary to serve legitimate correctional and law enforcement needs. Such

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\* All abbreviations used herein are referenced within the text.

provisioning is often more economically and technologically feasible than provisioning at SWBT's central offices. Providing such functionalities at the premises where such telephones are located is firmly supported by Commission precedent. Neither these telephones nor the advanced functionalities they sometimes provide should be regarded as logically or technically severable from the pay telephone network generally.

In addition, there is no evidence that ICSPTF has been harmed, competitively or otherwise, by the regulated treatment of inmate-only pay telephones. Thus, ICSPTF's unsubstantiated claims of having suffered anti-competitive effects as a result of such treatment should be rejected.

Finally, ICSPTF's complaint that some inmates' use of a personal identification number ("PIN"), the only service it mentions that is pertinent to SWBT, is an enhanced service should also be rejected.

Accordingly, ICSPTF's Petition should be denied in all respects.

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of	)	
the Petition	)	RM-8181
of the Inmate Calling	)	
Services Providers Task Force	)	
for Declaratory Ruling	)	

TO: The Commission

COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company ("SWBT"), by its attorneys and pursuant to the Commission's Public Notice,<sup>1</sup> hereby submits its Comments to the Petition for Declaratory Ruling ("Petition") filed by the Inmate Calling Services Providers Task Force ("ICSPTF"). ICSPTF asks the Commission to rule that pay telephones provided by Local Exchange Carriers ("LECs") and used by individuals confined at correctional facilities are Customer Premises Equipment ("CPE") and that certain functionalities offered by the LECs in connection with such pay telephones are enhanced services. SWBT opposes ICSPTF's Petition in all respects.

I. INTRODUCTION

ICSPTF's Petition reflects a fundamental misunderstanding of the purpose of the Commission's pay telephone exclusion from the definition of CPE -- to provide members of "the general public or some segment thereof" access to telephone service. Unlike the multiplexer exclusion on which ICSPTF so heavily relies, the pay

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<sup>1</sup> DA 93-137, released February 9, 1993.

telephone exclusion is broadly construed to effectuate this public purpose.

Inmate-only pay telephones meet the Commission's pay telephone exclusion test -- whether the primary user is "the general public or some segment thereof." Inmates remain members of the general public despite their confinement, or are a segment thereof because of it. In either event, like other members of the public, an inmate does not own the telephone, cannot dictate who may use it, and does not separately select or pay for its use. Like other members of the public, inmates regard the pay telephone instrument and transmission line as an end-to-end, integrated service. Thus, the Commission's regulated treatment of pay telephones fully applies to inmate-only pay telephones used by inmates confined in federal, state, municipal, and other correctional facilities.<sup>2</sup>

The regulated status of such pay telephones is not lost because SWBT also provides them, where requested by correctional officials, with certain advanced functionalities necessary to serve legitimate correctional and law enforcement needs. Such provisioning is often more economically and technologically feasible than provisioning at SWBT's central offices. Providing such functionalities at the premises where such telephones are located is firmly supported by Commission precedent. Neither these telephones nor the advanced functionalities they sometimes

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<sup>2</sup> For purposes of these Comments, the terms "inmate-only" pay telephone service shall encompass such service that is made available to individuals confined at such facilities.

provide should be regarded as logically or technically severable from the pay telephone network generally.

In addition, there is no evidence that ICSPTF has been harmed, competitively or otherwise, by the regulated treatment of inmate-only pay telephones. Thus, ICSPTF's unsubstantiated claims of having suffered anti-competitive effects as a result of such treatment should be rejected.

Finally, ICSPTF's complaint that some inmates' use of a personal identification number ("PIN"), the only service it mentions that is pertinent to SWBT, is an enhanced service should also be rejected.

Accordingly, ICSPTF's Petition should be denied in all respects.

II. INMATE-ONLY PAY TELEPHONES ARE PAY TELEPHONES WITHIN COMPUTER II AND ARE PROPERLY EXCLUDED FROM THE DEFINITION OF CPE.

A. The Pay Telephone Exclusion From The Definition Of CPE Is Well-Established And Broadly Construed.

Permeating ICSPTF's entire Petition is the notion that the pay telephone exclusion should be narrowly defined and strictly construed against the LECs. This notion is wrong. The pay telephone exclusion is well-established by FCC precedent and broadly construed to provide the public access to telecommunications. Thus, it is not SWBT's or any LEC's burden to justify its inmate-only payphones as properly regulated. Rather, ICSPTF must show that such payphones should not be regulated. ICSPTF has failed to meet this burden.

In Computer II,<sup>3</sup> the Commission defined CPE as "terminal equipment located at a subscriber's premises which is connected with the termination of a carrier's communication channel(s) at the network interface at that subscriber's premises."<sup>4</sup> It also determined that carrier-provided CPE would not be regulated under Title II of the Communications Act. However, the Commission excluded from the definition of CPE "over voltage equipment, inside wiring, coin operated or pay telephones, and multiplexing equipment to deliver multiple channels to the customer."<sup>5</sup>

In Tonka Tools,<sup>6</sup> the Commission determined that both coin and coinless pay telephones could be provided on a regulated tariffed basis. It further concluded that pay telephones, whether used to provide public or semi-public telephone service, and whether the intelligence for the service was located in the instrument, central office or both, could continue to be provided in its traditional manner -- as part of an integrated, end-to-end

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<sup>3</sup> Amendment of Section 64.702 of the Commission's Rules and Regulations ("Computer II"), 77 F.C.C. 2d 384, ("Final Decision"), Reconsideration, 84 F.C.C. 2d 50 (1980), Further Reconsideration, 88 F.C.C. 2d 512 (1981), aff'd sub nom., Computer & Communications Industry Association v. FCC, 693 F.2d 198 (D.C. Circ. 1982), cert. denied, 461 U.S. 938 (1983), Second Further Reconsideration, FCC 84-190, released May 4, 1984.

<sup>4</sup> Id. at 398, n. 10.

<sup>5</sup> Id. at 447, n. 57 (emphasis added).

<sup>6</sup> In the Matter of Petition for Declaratory Ruling of Tonka Tools, Inc. and Southern Merchandise Corp. regarding American Telephone and Telegraph Company Provision of Coinless Pay Telephones, Memorandum Opinion and Order ("Tonka Tools"), 1985 FCC Lexis 3272, released May 22, 1985.

communication service -- and that none would be regarded as CPE.<sup>7</sup> Tonka Tools also stated the benchmark for pay telephones' regulatory treatment under Computer II -- whether the primary user is "the general public or some segment thereof."<sup>8</sup> The Commission has since reaffirmed that pay telephones may remain tariffed and that they may be provided with transmission capacity as an integrated, end-to-end service.<sup>9</sup>

Contrary to ICSPTF's view, the pay telephone exclusion is not simply one of but "a few narrowly defined classes" of CPE warranting special regulatory treatment.<sup>10</sup> No FCC Order supports ICSPTF's view and Computer II, Tonka Tools and the CPE/Enhanced Services Eighth Report completely discredit it. For the same reasons, there is no merit to ICSPTF's claim that SWBT and other carriers must shoulder a "high threshold burden" to show that inmate-only pay telephones should remain a carrier offering.<sup>11</sup> Indeed, the NCTE Interconnection Decision<sup>12</sup> cited by ICSPTF never mentioned such equipment, much less its regulatory treatment.

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<sup>7</sup> Id. at para. 12.

<sup>8</sup> Id.

<sup>9</sup> In the Matter of Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services, CC Docket 81-893, Eighth Report and Order, 3 FCC Rcd 477, 479 at para. 18 (1988) ("CPE/Enhanced Services Eighth Report").

<sup>10</sup> Petition, at 10.

<sup>11</sup> Id.

<sup>12</sup> Amendment of Part 68 of the Commission's Rules and Regulations, ("NCTE Interconnection Decision") 94 FCC Rcd 2d 5, 15 (1983), recon. denied, FCC 84-145, \_\_\_\_\_ FCC Rcd \_\_\_\_\_, 1984.

As shown above, the pay telephone exclusion is well established, broadly construed and encompasses equipment provided at correctional facilities to provide pay telephone service to the inmate public. ICSPTF's contrary arguments should be rejected.

B. Inmates Are Members Of The Public Or "Some Segment Thereof" By Whom Regulated Pay Telephones May Be Used Under the Computer II Pay Telephone Exclusion.

Resolving all of ICSPTF's several complaints largely turns on resolving the issue of whether inmates are among those whom the Commission intended to include as beneficiaries of its regulated treatment of pay telephone services. More particularly, the question is whether the circumstances under which inmates use pay telephones are sufficiently like the circumstances under which others who use pay telephones -- the "general public or some segment thereof."<sup>13</sup> For several reasons, this question should be answered affirmatively.

First, an inmate using a pay telephone is not the owner of the instrument. Second, such an inmate does not have exclusive possession or control over the pay telephone premises, i.e. that portion of the property generally at which the pay telephone is placed. Third, the party such an inmate is calling is simply buying the call. Neither the inmate nor the called party separately selects or pays for the instrument's use. He or she cannot separately select, combine or pay for the instrument and transmission line used to make the call. Each of these

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<sup>13</sup> Tonka Tools, at para. 12.

circumstances is common to other members of the public who use pay telephones. A member of the public does not own the instrument he or she uses. He or she cannot dictate who may or may not use the instrument from among those persons who are authorized to enter the property.<sup>14</sup> Other members of the public do not separately select or pay for the instrument they use. In short, they view the pay telephone instrument and transmission line the same as do inmates -- an end-to-end and "necessarily integrated" service.<sup>15</sup>

These circumstances are clearly distinguishable from those in which a traditional subscriber's telephone instrument may be regarded as CPE. In the latter, the telephone instrument is within the subscriber's possession or control, is located on property over which the subscriber has possession or control, and is perceived by the subscriber as "severable from" the underlying transmission line.<sup>16</sup>

Resorting to commonly understood meanings of the terms "public" and "segment" also lends to the conclusion that inmate-only pay telephones should be treated as other pay telephones. Even if one were to limit "public" to mean "the public at large,"

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<sup>14</sup> Of course, the owner, lessee or other entity having legal possession and control of the property on which a pay telephone is situated may effectively control who might wish to use the telephone by limiting those whom it authorizes to enter on the property, but this ability to exclude entry by other members of the public is a characteristic no different than that shared by correctional institution officials. In neither case does the pay telephone become non-public merely because of such authority to control entry to the property.

<sup>15</sup> Tonka Tools, at para. 12.

<sup>16</sup> Id.

still a "segment" thereof would include the inmate population, as it is "part of" or "one of the constituent parts of"<sup>17</sup> the public at large. Accordingly, even if inmates are but one "segment" of the public at large, inmate-only pay telephones are "public" because they are "accessible to or shared by all members of the [correctional institution's confined] community."<sup>18</sup>

ICSPTF would have the Commission rule that telephone instruments made available to users under "controlled conditions" should not be regarded as public pay telephones.<sup>19</sup> It appears to suggest as examples of such instruments telephones situated in hotel, hospital and university dormitory rooms, which are treated as CPE.<sup>20</sup> ICSPTF's proposed litmus test should be rejected. The purported "controlled conditions" distinction finds no support in the above FCC precedent, nor in the commonly understood meanings of the term "public."

Moreover, the rationale that a telephone instrument used by a hotel guest, hospital patient and dormitory student is not a public telephone, and therefore CPE, does not rest on any such distinction. Rather, the guest, patient and student all have possession and control over both the instrument situated in his or her room, as well as the room itself. As a result, each has the ability to exclude others in the hotel, hospital or university

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<sup>17</sup> Webster's New Collegiate Dictionary (1979 ed.), at 1038.

<sup>18</sup> Id. at 925.

<sup>19</sup> Petition, at 12.

<sup>20</sup> Id.

community who might wish to use the instrument. Thus, the instrument is not a "public" telephone. The user's ability to exclude others' use supports CPE treatment in these instances, not the user's living under controlled conditions.

On the other hand, pay telephones placed in hotel facilities, hospital waiting rooms, and dormitory hallways, also are not generally accessible to the public at large, i.e., are offered under "controlled conditions." Yet, these telephones are regarded as available to the public, i.e., are pay telephones, because they may rightfully be used by others in the hotel, hospital, or university community who are authorized to enter the property. An inmate is no more able to exclude others' use of pay telephones than other members of the public. The fact that he or she lives under controlled conditions is irrelevant.

Under Computer II and Tonka Tools, and resort to common meanings, inmates remain members of the "general public or some segment thereof." Pay telephones used by them should remain regulated. ICSPTF's proposed test is not supported either by precedent or by logic and should be rejected.<sup>21</sup>

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<sup>21</sup> ICSPTF's proposal may stem from its belief that a "transient, mobile public "user" is the sine qua non of public telephone service. Id. As shown above, the Commission's rulings simply cannot be read so narrowly. Instead, the test is and should remain whether the "primary customer" is a member of "the general public or some segment thereof." Tonka Tools, at para. 12.

C. The Specialized Functionality Associated With Inmate-Only Pay Telephones Is Firmly Supported By Commission Precedent And Does Not Convert Such Telephones To CPE.

The configuration of inmate-only pay telephone services at correctional institutions requires a delicate balancing of the needs and interests of correctional officials with those of the inmate community. On this basic principle, SWBT and ICSPTF do not differ.<sup>22</sup>

However, ICSPTF again seeks to distinguish inmates from other members of the public by claiming that inmates have "needs very different" from the general public, that these needs are met by the LECs' providing inmate-only pay telephones with "specialized functionality" not shared by other pay telephones and, accordingly, that such telephones should be treated as CPE.<sup>23</sup> For several reasons, this argument is fundamentally flawed.

Inmates' communications needs are not different from those of other members of the public. However, correctional officials have a special need -- to prevent inmates from committing further criminal acts even while confined. Certain intelligent functionalities are required by correctional officials, and are provided in inmate-only pay telephones. Yet, this does not alter the fact that inmates using such pay telephones remain members of the public or some segment thereof. Just as importantly, this does not convert the pay telephones provided them to CPE.

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<sup>22</sup> Petition, at 14.

<sup>23</sup> Id.

The functionalities which may be provided in inmate-only pay telephones, if requested by corrections officials, includes restricting calls by time of day, to confine outgoing calls to certain hours; restricting call duration, to limit the length of the call; restricting called numbers, to preclude certain calls being made, for example, to businesses with 800 numbers, 911 providers, judges, law enforcement officials and others, or conversely, to allow calls to only certain numbers, in either case sometimes through an inmate's use of a personal identification number ("PIN");<sup>24</sup> call recording and monitoring;<sup>25</sup> and, collection and storage of the calling and called number and the date and time of the call ("Station Message Detail Recording" or "SMDR").

To the extent that such intelligence is situated within inmate-only pay telephones, the telephones may be regarded as "instrument implemented," not unlike the pay telephones in Tonka Tools which could accept credit cards without central office equipment assistance. In that case, the Commission recognized that Computer II did not envision the technological changes in pay telephones that had since occurred.<sup>26</sup> Yet, it ruled that the

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<sup>24</sup> Restricting calls to exclude 800 numbers and 911 providers is more typically accomplished by central office equipment. The "screening" intelligence necessary to ensure that "collect calls only" are made from such instruments, and to allow operators to recognize such calls as inmate-only and treat them appropriately, is also located in part within the central office.

<sup>25</sup> As noted in Section III hereinafter, when requested, SWBT merely provides corrections officials with recording and/or monitoring equipment as CPE, and not as a "service."

<sup>26</sup> Tonka Tools, at para. 10. The Commission also observed that "[a]s originally conceived, the pay telephone exclusion recognized  
(continued...)

instrument-implemented sets at issue were not CPE. It reasoned that although the instruments did not necessarily need to rely upon central office facilities and interaction, "the pay telephone exclusion does not rest upon considerations of technical severability alone."<sup>27</sup> Instead, the Commission focused upon the benchmark test satisfied there and ignored by ICSPTF here: "[whether] the primary customer of this pay telephone equipment for Computer II regulatory purposes is still the general public or some segment thereof."<sup>28</sup> As demonstrated above, inmate-only pay telephones meet this test.

Generally speaking, available or in-progress technologies might permit the specialized functionalities of which ICSPTF complains to be provided by central office equipment, rather than at the correctional institution. Where technology readily permits it, SWBT's deployment either at the central office or at the institution's premises depends upon which is more economical under the circumstances. Tonka Tools teaches that SWBT's choice based upon such a factor does not convert the premises equipment to CPE. Forcing migration of these functionalities to the central office merely to make inmate-only pay telephones systems "dumb" enough to allow their continued regulated status flies in the face of Tonka

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<sup>26</sup> (...continued)  
that the technical integration of the pay terminal and central office facilities characteristic of the coin service then being provided distinguished these types of devices from the general class of CPE being detariffed by Computer II." Id. at para. 11.

<sup>27</sup> Id., at para. 12.

<sup>28</sup> Id.

Tool's allowing "smart" pay telephone functionality to remain at the premises.

Moreover, forcing SWBT to offer all such functionalities solely at the central offices as a condition to allowing SWBT to offer them at all on a regulated basis would be very expensive and time consuming. Thus, the ratepayers whose interests ICSPTF superficially advances would absorb greater expenses were the Commission to rule as ICSPTF requests.

ICSPTF's reliance upon IBM<sup>29</sup> as prohibiting the "specialized functionality" in inmate-only pay telephones is similarly misplaced. There, the Commission rejected a proposed tariff seeking to offer a data line subscriber carrier service because its modem-like and other functions failed to meet the multiplexer exclusion from the definition of CPE. The case turned on the fact that the functions other than multiplexing had been "historically treated"<sup>30</sup> as competitively provided CPE. That analysis under the narrow construed multiplexer exclusion is irrelevant to the more broadly construed pay telephone exclusion. Indeed, in Tonka Tools, the Commission's conclusion was reached "independent of" the fact that, as here, such equipment may be registered under the Commission's Part 68 rules and is provided by non-carrier vendors.

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<sup>29</sup> In the Matter of International Business Machines Corp., Memorandum Opinion and Order, ENF File No. 83-34, FCC 85-292, released June 11, 1985 ("IBM").

<sup>30</sup> Id. at 9, para. 14.

The specialized functionalities about which ICSPTF complains do not convert inmate-only pay telephones to CPE. Irrespective of them, inmates remain members of the public or a segment thereof. No reason exists to depart from Commission precedent by requiring that such functionalities must migrate to the central office in order to preserve the regulated pay telephone exclusion in correctional facilities.

D. There Is No Evidence Supporting ICSPTF'S Unsubstantiated Claims That Regulated Treatment Of Inmate-Only Pay Telephones Has Caused It Any Competitive Harm.

ICSPTF claims that, by offering inmate-only pay telephones through regulated accounts, the LECs "are able to offer correctional facilities commissions higher than those which ICSPTF members can afford."<sup>31</sup> ICSPTF further claims that without such regulated treatment, its members "would have been able to compete for contracts . . . on a more 'level playing field,'" but "[i]nstead, ICSPTF members never had a chance."<sup>32</sup>

Each of ICSPTF's self-serving claims is without merit. First, ICSPTF provides no empirical data or other evidence to support them, nor does it describe any causal connection between the alleged lack of competition and the relief it requests in its Petition, i.e., deregulation of inmate-only pay telephones. In Tonka Tools, claims similar to those of ICSPTF were made. There, independent pay telephone providers argued that allowing carriers

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<sup>31</sup> Petition, at 18.

<sup>32</sup> Id.

to continue bundling pay telephones and service jeopardized the development of a competitive market fair to both carriers and non-carriers.<sup>33</sup> The Commission rejected this argument, concluding that it was not convinced that such carrier bundling presented "any serious threat to the viability of these competitors."<sup>34</sup> The same conclusion is amply justified in this case.

Second, ICSPTF's unsupported claims are further defeated by SWBT's own experience. In a sample of inmate-only pay telephone bids that SWBT recently submitted in one of the five states it services, SWBT lost more of them than it won.

Clearly, competition in this market is healthy, and despite ICSPTF's further criticisms of so-called LEC ratepayer subsidization of inmate-only pay telephones, SWBT's ratepayers are being treated with complete fairness. Accordingly, all of ICSPTF's anti-competitive claims must be rejected for lack of proof.<sup>35</sup>

III. THE "PIN" RELATED INMATE-ONLY PAY TELEPHONE SERVICE IDENTIFIED BY ICSPTF THAT IS PROVIDED BY SWBT IS NOT AN ENHANCED SERVICE.

ICSPTF claims that "a number of" the specialized services provided at inmate-only pay telephones are enhanced and must be

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<sup>33</sup> Tonka Tools, at para. 12, n. 32.

<sup>34</sup> Id.

<sup>35</sup> Even if ICSPTF could mount such proof, it would be entitled to much less deference for purposes of applying the pay telephone exclusion than for purposes of applying the multiplexer exception, which is not at issue here. Tonka Tools suggests that greater proof would be required in the former, while IBM suggests that lesser proof would be required in the latter.

offered on an unregulated basis.<sup>36</sup> However, of those functionalities listed in Section II, C., ante, ICSPTF identifies only inmate use of a PIN by some inmates as an alleged enhanced service. It also alleges that recording/voice storage and automatic call answering are enhanced services.<sup>37</sup>

An inmate's use of a PIN is not an enhanced service. The remaining services noted above are irrelevant insofar as SWBT is concerned as SWBT either does not offer the service or, such equipment as SWBT does provide is not accompanied by any provision of service, enhanced or otherwise.

Enhanced services are defined in Rule 64.702(a) as:

services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information, provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under Title II of the Act.<sup>38</sup>

On the other hand, a basic service is an offering of transmission capacity between two or more points suitable for a user's transmission needs.<sup>39</sup>

The Commission has recognized certain "adjuncts to basic services" which, though possibly encompassed within the literal

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<sup>36</sup> Petition, at 18.

<sup>37</sup> Id. at 21-22. ICSPTF does not identify SWBT as one of the LECs it claims are providing such "services."

<sup>38</sup> 47 C.F.R. Section 64.702(a).

<sup>39</sup> Computer II Final Decision, at 420.

definition of enhanced services, are excluded because they are basic in purpose and use and bring maximum benefits to the public.<sup>40</sup> Such recognition reflects the Commission's desire to serve the public interest by encouraging development of intelligence and new optional features within the network.<sup>41</sup>

ICSPTF argues that the use of PINs by those inmates having them is similar to the use of Customer Dialed Account Recording ("CDAR"), which the Commission found was an enhanced service in NATA. ICSPTF's proposed analogy is not accurate.

SWBT's experience is that a PIN is one vehicle by which an inmate's calls to certain numbers are pre-approved or, conversely, are not approved and thus cannot be dialed by the inmate. A Station Message Detail Recording ("SMDR"), where requested by correctional officials, provides a record of the date, time, duration, and called number of each outgoing call at a given pay telephone.<sup>42</sup> Also, where requested by correctional facilities, SWBT may provide PINs on the SMDRs so that the caller on particular outgoing calls can be identified.

This functionality is not CDAR. Its primary purpose is to facilitate inmate use of the transmission channel by blocking or permitting inmate calls. It is not to "tag" them so that the

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<sup>40</sup> In the Matter of North American Telecommunications Association, Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment, ENF 84-2, Memorandum Opinion and Order, FCC 85-248 (1985), at para. 24 ("NATA").

<sup>41</sup> Id.

<sup>42</sup> SMDR is not an enhanced service. NATA at paras. 41-42.

facility can bill the inmate for the call like an attorney tags incoming calls to bill clients for them, as the Commission observed in NATA.<sup>43</sup> It is related to the use and management of inmate-only pay telephone service, consistent with public safety, and provides no one with the cost accounting process noted in NATA.<sup>44</sup>

Finally, a PIN provides no new, additional or different information. The PIN identifies the name of the inmate, not unlike the Call Monitor service noted in NATA,<sup>45</sup> which recorded the calling party's number and which the Commission found was not enhanced. Indeed, given that virtually all inmate-only calls are collect-only, recording of a PIN or SMDRs add nothing to the original call; the inmate already identified himself or herself to both the telephone operator and the consenting called/billed party for the purpose of completing the call in the first instance. Thus, such functionality is not an enhanced service, but either a basic service or an adjunct to basic service.

ICSPTF also complains that "the recording capabilities provided by LECs clearly involve voice storage."<sup>46</sup> It elsewhere broadly claims that voice mail, storage and retrieval capability is featured in LEC offered inmate-only pay telephone systems.<sup>47</sup> SWBT is unaware of any instance in which its regulated inmate-only pay

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<sup>43</sup> Id. at para. 42.

<sup>44</sup> Id. at para. 41.

<sup>45</sup> Id. at paras. 44, 52.

<sup>46</sup> Petition, at 21.

<sup>47</sup> Id. at 8.

telephone services are also provided with voice mail, voice storage or voice retrieval services, either in the transmission line or the telephone instrument. Such conversation monitoring and recording capability that correctional officials may have as a result of SWBT-provided equipment is obtained solely from the officials' own operation of that equipment, not by SWBT's providing any "service" to them. Finally, to the extent that ICSPTF's use of the phrase "automatic call answering"<sup>48</sup> is meant to include what is commonly referred to as "voice mail," SWBT re-emphasizes that it provides no such service among its regulated inmate-only pay telephones or services.

For these reasons, ICSPTF's claim that use of PINs, the only "specialized functionality" pertinent to SWBT that ICSPTF asserts is enhanced, should be dismissed. It is not an enhanced service, but either a basic service or an adjunct to basic service.

#### IV. CONCLUSION

Inmate-only pay telephones meet the Commission's pay telephone exclusion test--the primary users are inmates who remain members of the general public despite their confinement, or are a segment thereof because of it. Commission precedent also permits such telephones to have the specialized functionalities which correctional officials require, despite ICSPTF's complaints. ICSPTF's further unsubstantiated claim that it has suffered competitive harm is entitled to no weight. Finally, the limited

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<sup>48</sup> Id. at 21.

services that ICSPTF claims are enhanced are not in fact enhanced. Thus, all of ICSPTF's claims should be rejected and its petition should be denied.

Respectfully submitted,

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March 8, 1993